SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 480.

LOUIS McNEESE, JR., a Minor, by MABEL McNEESE, His Mother and Next Friend, et al.,
Petitioners,

vs.

BOARD OF EDUCATION FOR COMMUNITY UNIT SCHOOL DISTRICT NO. 187, CAHOKIA, ILLINOIS, et al.,
Respondents.

BRIEF

For Respondents Board of Education for Community Unit School District No. 187, and Robert F. Catlett.

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For Respondents Board of Education for Community Unit School District No. 187, and Robert F. Catlett.

JURISDICTION.

There is no jurisdiction under Section 1983 as to the respondent Board of Education for the reason that the word "person" in Section 1983 does not include such respondent, upon the authority of **Monroe v. Pape**, 365 U. S. 167, and **Egan v. City of Aurora**, 365 U. S. 514.

QUESTIONS PRESENTED.

As to question number 1 the record does not reflect that the district court required exhaustion of administrative remedies, but only that the petitioners attempt to invoke the state administrative remedy.

Question number 2 also refers to exhaustion rather than attempting to invoke, and argumentatively postulates that the state official is without power to eliminate discrimination, which is not legally correct.

Question number 3 postulates that the district court required recourse to a state administrative procedure requiring 50 signatures when it, of course, required only that the petitioners themselves apply to the state official for his intervention which he is authorized to provide without 50 signatures and not that they obtain 50 signatures on a formal petition.

STATUTES INVOLVED.

This case involves the following statutes of the State of Illinois, in Chapter 122, which is The School Code:

I.

The Superintendent of Public Instruction shall have the powers and duties enumerated in the subsequent sections of this article. Section 2-3. (These include):

A.

To supervise all the public schools in the State. Section 2-3.3.

B.

To advise and assist county superintendents of schools, addressing to them from time to time circular letters relating to the best manner of conducting schools, constructing and furnishing schoolhouses, and examining and procuring competent teachers. Section 2-3.5.

C.

To determine for all types of schools conducted under this Act efficient and adequate standards for the

physical plant, heating, lighting, ventilation, sanitation, safety, equipment and supplies, instruction and teaching, curriculum, library, operation, maintenance, administration and supervision, and to grant certificates of recognition to schools meeting such standards; to determine and establish efficient and adequate standards for approval of credit for courses given and conducted by schools outside of the regular school term; and to determine for junior colleges, as a part of the public common school system, the standards for their establishment and their proper location in relation to existing facilities for general education including preprofessional curricula and for training in occupational activities, and in relation to a factual survey of the possible enrollment, assessed valuation, industrial, business, agricultural and other conditions reflecting educational needs in the area to be served; but provided that no public junior college may be considered as being recognized, nor may the establishment of any public junior college be authorized, in any school district which on the basis of the evidence supplied by the factual survey, shall be deemed inadequate for the maintenance, in accordance with the desirable standards thus determined of a junior college offering the basic subjects of general education, and suitable vocational and semiprofessional curricula terminal in character. However, the establishment of any public junior college shall not be authorized in any school district having a population of less than 10,000 persons and if there is no school district having a population of more than 10,000 persons in the county, there shall not be authorized the establishment of more than one junior college in such county. Section 2-3.25

II.

Boards of Education in addition to the duties enumerated above shall have the additional duties enumerated in sections 10-21.1 through 10-21.5. Section 10-21. (These include):

A.

To establish one or more attendance units within the district. Section 10-21.3.

The school board shall have the powers enumerated in Sections 10-22.1 through 10-22.34. Section 10-22. (These include):

B.

To assign pupils to the several schools in the district; to admit nonresident pupils when it can be done without prejudice to the rights of resident pupils and provide them with any services of the school including transportation; to fix the rates of tuition and other costs including transportation, and to collect and pay the same to the treasurer for the use of the district; but no pupils shall be excluded from or segregated in any such school on account of his color, race or nationality. Section 10-22.5

III.

The school board of each school district shall require teachers, principals, or superintendents to furnish from records kept by them such data as it needs in preparing and certifying to the county superintendent its school district report of claims provided in Sections 18-8 through 18-10 on blanks to be provided by the Superintendent of Public Instruction. The district claim shall be based on the latest available equalized assessed valuation and educational tax rate, shall use the average daily attendance for the

first calendar month of the current school term as determined by the method outlined in Section 18-8, and shall be certified and filed by October 25. Such report shall be accompanied by an affidavit, sworn to by either the superintendent, principal, administrative officer, or a member of the school board, stating that each school operated by such board has complied with the requirements of Sections 27-3, 27-4 and 27-21 in regard to patriotism, American history, and constitutional principles.

Failure on the part of the school board to prepare and certify the school district report of claims for State aid and the accompanying affidavit as required above to the county superintendent by November 1 shall constitute a forfeiture by the district of its right to participate in a distribution of the common school fund for the succeeding year.

The county superintendent of schools shall prepare and certify to the Superintendent of Public Instruction not later than November 15 the county report of claims for State aid upon blanks prepared and furnished by the Superintendent of Public Instruction.

The Superintendent of Public Instruction shall prepare and certify to the Auditor of Public Accounts not later than January 25 the State report of claims for State aid setting forth the amount of money due each county from the common school fund, together with the amount claimed by each city or school district not coming under the provisions of the retirement system created by Article 25.

Amended claims based on attendance for the entire school year ended June 30, or the alternate of 6 months of highest attendance provided in Section 18-8, shall be certified and filed with the county superintendent by July 15 and failure to so file by July 22

shall constitute a forfeiture of the right to file any such amendment of claim; the county superintendent of schools shall certify the county report of amended claims by August 5; and the Superintendent of Public Instruction shall certify the State report of amended claims to the Auditor of Public Accounts by September 15.

No state aid claim may be filed for any district unless the clerk or secretary of the school board executes and files with the Superintendent of Public Instruction, on forms prescribed by him, a sworn statement that the district has complied with the requirements of Section 10-22.5 in regard to the non-segregation of pupils on account of color, creed, race or nationality.

No State aid claim may be filed for any district unless the clerk or secretary of the school board executes and files with the Superintendent of Public Instruction, on forms prescribed by him, a sworn statement that to the best of his knowledge or belief the employing personnel have not discriminated in the employment of teachers on the basis of color, creed, race or nationality. Section 18-12.

IV.

A.

Any school officer or other person who excludes or aids in excluding from the public schools, on account of color, any child who is entitled to the benefits of such school shall be fined not less than $5 nor more than $100. Section 22-11.

B.

Whoever by threat, menace or intimidation prevents any colored child entitled to attend a public

school in this state from attending such school shall be fined not exceeding $25. Section 22-12:

C.

Upon the filing of a complaint with the Superintendent of Public Instruction, executed in duplicate and subscribed with the names and addresses of at least 50 residents of a school district or 10%, whichever is lesser, alleging that any pupil has been excluded from or segregated in any school on account of his color, race, nationality, religion or religious affiliation, or that any employee of or applicant for employment or assignment with any such school district has been questioned concerning his color, race, nationality, religion or religious affiliation or subjected to discrimination by reason thereof, by or on behalf of the school board of such district, the Superintendent of Public Instruction shall promptly mail a copy of such complaint to the secretary or clerk of such school board.

The Superintendent of Public Instruction shall fix a date, not less than 20 nor more than 30 days from the date of the filing of such complaint, for a hearing upon the allegations therein. He may also fix a date for a hearing whenever he has reason to believe that such discrimination may exist in any school district. Reasonable notice of the time and place of such hearing shall be mailed to the secretary or clerk of the school board and to the first subscriber to such complaint.

The Superintendent of Public Instruction may designate an assistant to conduct such hearing and receive testimony concerning the situation complained of. The complainants may be represented at such hearing by one of their number or by counsel. Each party shall have the privilege of cross-examining witnesses. The superintendent of Public Instruction or the hearing

officer appointed by him shall have the power to subpoena witnesses, compel their attendance, and require the production of evidence relating to any relevant matter under this Act. Any Circuit or Superior Court of this State, or any judge thereof, either in term time or vacation, upon the application of the Superintendent of Public Instruction or the hearing officer appointed by him, may, in its or his discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Superintendent of Public Instruction or the hearing officer appointed by him conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before said court. The Superintendent of Public Instruction or the hearing officer appointed by him may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. All testimony shall be taken under oath administered by the hearing officer, but the formal rules pertaining to evidence in judicial proceedings shall not apply. The Superintendent of Public Instruction shall provide a competent reporter to take notes of all testimony. Either party desiring a transcript of the hearing shall pay for the cost of such transcript. The hearing officer shall report a summary of the testimony to the Superintendent of Public instruction who shall determine whether the allegations of the complaint are substantially correct. The Superintendent of Public Instruction shall notify both parties of his decision. If he so determines, he shall request the Attorney General

to apply to the appropriate circuit court for such injunctive or other relief as may be necessary to rectify the practice complained of.

The provisions of the "Administrative Review Act", approved May 8, 1945,[1] and all amendments and modifications thereof and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of any final decision rendered by the Superintendent of Public Instruction pursuant to this Section. Section 22-19.

STATEMENT.

The amended complaint names as defendants, the board of education of School District No. 187, a quasi-municipal corporation, Clarence D. Blair, county superintendent of schools of St. Clair County, in which School District No. 187 is located, and Robert F. Catlett, superintendent of schools of the school district.

The amended complaint contains allegations which consider the defendants largely without respect to their separate functions.

At the district court and court of appeals levels the aspect of the case considered was the suit for injunctive relief against the school district. This is disclosed by the briefs of the parties below and the opinions of the two courts. No more than formal attention was paid to the case against the indvidual respondents.

It may be pointed out that the amended complaint does not attack the constitutionality of Section 10-21.3 of The School Code of Illinois, authorizing a board of education to "establish one or more attendance units within the district".

No evidence has been taken, hence, all of the "facts" in petitioners' Statement are taken from the allegations in petitioners' amended complaint. Even these allegations, it may be noted, relate to school years prior to the one as to which injunctive relief was sought, except for the general allegation that all or substantially all of the facts relating to previous school years continued to exist during the 1961-1962 school year.

ARGUMENT.

In the Case Against the Board of Education.

I.

The Dismissal of the Action Against the Board of Education Was Proper.

There is no jurisdiction under Title 42, U. S. C., 1983, as to the respondent Board of Education.

Although the issue is not raised in the motion to dismiss filed in the district court, the board of education has not answered nor otherwise waived jurisdictional objections, and the question of jurisdiction can be raised at any time. **Mansfield, Coldwater and Lake Michigan Railway Co. v. Swan,** 111 U. S. 379.

The board of education is correctly alleged in paragraph VI of the amended complaint to be "a body politic, organized, existing and operating under and by virtue of Chapter 122, Article 8, Illinois Revised Statutes" (R. 4).

A community unit school district in Illinois is described in the following language of the Supreme Court:

> "A community unit school district, like any other school district established under enabling legislation, is entirely subject to the will of the legislature thereafter. With or without the consent of the inhabitants of a school district, over their protests, even without notice or hearing, the State may take the school facilities in the district, without giving compensation therefor, and vest them in other districts or agencies. The State may hold or manage the facilities directly or indirectly. The area of the district may be contracted or expanded, it may be divided, united in whole or in part with another district, and the dis-

trict may be abolished. All this at the will of the legislature." **People v. Deatherage**, 401 Ill. 25, 31-32, 81 N. E. 581, 586.

In the same year this suit was brought this Court examined Section 1983 in two cases against a city and held specifically that the word "persons" in Section 1983 did not include municipal corporations. **Monroe v. Pape**, 365 Ill. 167, and **Egan v. City of Aurora**, 365 U. S. 514.

The same reasoning forces the conclusion that Section 1983 cannot apply to school districts.

II.

The District Court Properly Held That Petitioners Should Comply With an Adequate State Remedy.

Background.

The Constitution of the State of Illinois makes illegal the segregation of pupils in public schools according to race. Constitution, Article VII, Section 1.

In 1901 the Supreme Court of Illinois in People v. Mayor of Alton, 193 Ill. 309, 312, 61 N. E. 1077, 1078, declared:

> "The complaint of the relator is that his children have been excluded, on account of their color, from the public school of said city located near his residence and been required to attend a school located a mile and a half distant from his residence, established exclusively for colored children. Such complaint is not met by showing that the schools established for colored children in said city equal or surpass in educational facilities the schools established in said city for white children. Under the law the common council of said city had no right to establish different schools for the white children and colored children of said city and to exclude the colored

children from the schools established for white children, even though the schools established for colored children furnished educational facilities equal or superior to those of the schools established for white children".

Section 10-22.5 of The School Code of Illinois provides:

". . . but no pupils shall be excluded from or segregated in any such school on account of his color, race or nationality."

Section 22-11 and Section 22-12 of The School Code provide penalties against school officials and other persons who abridge the rights of colored school children in the following language:

"Any school officer or other person who excludes or aids in excluding from the public schools, on account of color, any child who is entitled to the benefits of such school shall be fined not less than $5 nor more than $100."

"Whoever by threat, menace or intimidation prevents any colored child entitled to attend a public school in this State from attending such school shall be fined not exceeding $25."

These statutes antedate **Brown v. Board of Education**, 347 U. S. 383.

In recent years the legislature, in an effort to implement the policy of the State, has adopted an approach whereby state financial aid is refused to school districts which violate Section 10-22.5. The latest expression of this effort is Section 18-12 of The School Code, which is in part as follows:

"No State aid claim may be filed for any district unless the clerk or secretary of the school board executes and files with the Superintendent of Public

> Instruction, on forms prescribed by him, a sworn statement that the district has complied with the requirements of Section 10-22.5 in regard to the non-segregation of pupils on account of color, creed, race or nationality."

In 1961 the General Assembly provided a further means of effectuating long established state policy by the enactment of Section 22-19 of The School Code. This statute provides for a procedure before the Superintendent of Public Instruction, the highest state school official, for the hearing of a complaint that a pupil had been excluded from or segregated in any school on account of his race. The procedure may be begun by the filing of a complaint signed by at least 50 residents of a school district, or by the Superintendent himself. The Superintendent is to set a date for hearing after reasonable notice to interested parties. The complainants may be represented by counsel. Cross-examination of witnesses is afforded. The power to subpoena witnesses and to produce evidence is given. Depositions of witnesses may be taken. Testimony is to be taken under oath, but the formal rules of evidence are not applied. A stenographic record is to be kept of the testimony.

The Superintendent of Public Instruction is required to determine whether the allegations in the complaint are substantially correct.

The Basic Question.

The basic question before this Court is whether a case under Section 1983 should be conditioned upon the use of an adequate state administrative procedure.

In considering this question two conditions are important to note: inquiry must necessarily go beyond the language of the civil rights act itself, as the doctrine relating

to the use of an administrative procedure is of judicial rather than statutory origin, and the administrative remedy being considered must be assumed to be adequate, as no one contends that an inadequate procedure must be used.

Federal courts have generally required the employment of state procedures before exercising their equity jurisdiction. The rationale employed has been stated by this Court in the following language from two fairly recent opinions.

> "Although a federal equity court does have jurisdiction of a particular proceeding, it may, in its sound discretion, whether its jurisdiction is invoked on the ground of diversity of citizenship or otherwise, 'refuse to enforce or protect legal rights, the exercise of which may be prejudicial to the public interest', for it 'is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy.' While many other questions are argued, we find it necessary to decide only one: Assuming that the federal district court had jurisdiction, should it, as a matter of sound equitable discretion, have declined to exercise that jurisdiction here?" **Burford v. Sun Oil Co.**, 319 U. S. 315, 317-318 (1943)

and

> "The rule that a suitor must exhaust his administrative remedies before seeking the extraordinary relief of a court of equity, Goldsmith v. United States Board of Tax Appeals, 270 U. S. 117, 123, 46 S. Ct. 215, 217, 70 L. Ed. 494; Porter v. Investors' Syndicate, supra; Petersen Baking Co. v. Bryan, 290 U. S. 570, 575, 54 S. Ct. 277, 278, 78 L. Ed. 505, 90 A. L. R.

1285; see United States v. Illinois Central R. Co., 291 U. S. 457, 463, 464-466, 54 S. Ct. 471, 474, 78 L. Ed. 909; is of special force when resort is had to the federal courts to restrain the action of state officers, Matthews v. Rodgers, 284 U. S. 521, 525, 526, 52 S. Ct. 217, 220, 76 L. Ed. 447; Porter v. Investors' Syndicate, 286 U. S. 461, 52 S. Ct. 617, 76 L. Ed. 1226; Id., 287 U. S. 346, 53 S. Ct. 132, 77 L. Ed. 354; cf. Central Kentucky Natural Gas Co. v. Railroad Comm., 290 U. S. 264, 271, 54 S. Ct. 154, 157, 78 L. Ed. 307; De Giovanni v. Camden Fire Ins. Ass'n, 296 U. S. 64, 56 S. Ct. 1, 80 L. Ed. 47, and the objection has been taken by the trial court. Matthews v. Rodgers, supra.

"The extent to which a federal court may rightly relax the rule where the order of the administrative body is assailed in its entirety, rests in the sound discretion which guides exercise of equity jurisdiction. Hollis v. Kutz, supra; United States v. Abilene & Southern Ry. Co., 265 U. S. 274, 282, 44 S. Ct. 565, 567, 68 L. Ed. 1016; cf. United States v. Sing Tuck, supra. But there are cogent reasons for requiring resort in the first instance to the administrative tribunal when the particular method by which it has chosen to exercise authority, a matter peculiarly within its competence, is also under attack, for there is the possibility of removal of these issues from the case by modification of its order. Here the commission had authority to pass upon every question raised by the appellant and was able to modify the order. In such circumstances, the trial court is free to withhold its aid entirely until administrative remedies have been exhausted." **Natural Gas Co. v. Slattery**, 302 U. S. 300, 310-11 (1937).

The same principle has been applied in numerous school cases. It has been held repeatedly that administrative remedies provided by state laws, fairly administered, must

be used before federal courts will grant injunctive relief. **Carson v. Board of Education**, 227 F. 2d 789 (4th Cir. 1955); **Carson v. Warlick**, 238 F. 2d 724 (4th Cir. 1956), certiorari denied 355 U. S. 910; **Covington v. Edwards**, 264 F. 2d 780 (4th Cir. 1959); **Holt v. Raleigh City Board of Education**, 265 F. 2d 95 (4th Cir. 1959), certiorari denied 361 U. S. 818; **Parham v. Dove**, 271 F. 2d 132 (8th Cir. 1959); **Shepard v. Board of Education of the City of Engelwood**, 207 F. Supp. 341 (D. C. N. J. 1962).

An attempt was made below by petitioners to establish that cases in the Fifth Circuit did not require the use of an administrative procedure. An individual examination of these cases discloses that this proposition is without basis. In **Mannings v. Board of Public Instruction**, 277 F. 2d 370 (1960), the Pupil Assignment Law of the State of Florida, which was involved, was held to be unconstitutional on its face, so that compliance with its administrative provisions was bound to be futile; in **Borders v. Rippy**, 247 F. 2d 268 (1957), involving schools in Dallas, the only administrative procedures were before the board of education and state commission which were the very bodies which caused the segregation of pupils being complained of; in **Orleans Parish School Board v. Bush**, 242 F. 2d 156 (1957), resort to the administrative remedy provided by the law of Louisiana was held to be "a vain and useless gesture" because the Louisiana constitution and statutes required the separation of white and colored children; in **Gibson v. Board of Public Instruction**, 246 F. 2d 913 (1957), involving schools in Dade County, Florida, local law required segregation; in **Holland v. Board of Public Instruction**, 258 F. 2d 730 (1958), and in **St. Helena Parish School Board v. Hall**, 287 F. 2d 376 (1961), the question of the use of administrative remedies was not at issue; and in **Bruce v. Stilwell**, 206 F. 2d 554 (1953) there was no administrative procedure under the law of Texas for the petitioners to follow.

These cases, as well as other cases which might have been cited which have not required resort to administrative remedies, did not follow the general principle because of factors which are not present in the instant case.

An interesting district court case may be cited. **Shepard v. Board of Education of the City of Englewood**, 207 F. Supp. 341 (1962), decided by the District Court of the District of New Jersey held, on issues practically identical to those raised in the amended complaint in this case, and with a state policy against discrimination, required that the plaintiffs use the administrative remedy provided by the law of the State of New Jersey.

Aside from the considerations expressed in the opinions just quoted, there is the question of whether the rights of the kind here involved may be realized more effectively in federal courts or under adequate state procedures.

In the areas of the United States where **Brown v. Board of Education** is not accepted, and where many state officials including judges are bent on frustrating the right, the Negro school child will not be able to realize his right before state tribunals. In the many other places where **Brown** is law, and in places where, as in the case of Illinois, **Brown** was preceded by state law, the right can be realized before state tribunals. No one would contend that the right of the petitioners can be vindicated only in a federal court.

While courts have some elasticity in their procedures, they are by their nature and tradition agencies for the determination of adversary controversies. They require pleadings. They are accustomed to take evidence in open court and be blind to what the parties do not bring out before them. They give their decisions by orders and judgments, and enforce compliance by means which are effective in the case of individual litigants, but are not always such a simple matter where groups are involved.

The experience of District Judge Kaufman in the New Rochelle school case should be noted. He had before him practically the same issues as are raised in this case. After taking 2,000 pages of testimony he made the point in his opinion that litigation was an unsatisfactory way to resolve the issues presented to him.[1] On several occasions during the taking of testimony the Judge undertook efforts to bring about a settlement. He is reported to have advanced specific settlement proposals in open court.[2] In so doing the Judge undoubtedly felt that his services as a mediator were as important as the historic function of a judge.

Even after making his decision, and after hearing on a plan, the Judge is reported to have felt the need for additional assistance, beyond the record in the case, so that he asked the Attorney General to intervene.[3]

Following the unsatisfactory experience in the district court, to which the opinion referred, there was an appeal to the court of appeals where the matter was again argued and decided,[4] and thereafter there was a petition for certiorari filed with this Court and which was denied.[5]

A federal court can struggle through a New Rochelle case, or even the instant one, but its staggering to think

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[1] "Litigation is an unsatisfactory way of resolving issues such as have been presented here. It is costly, time-consuming . . . causing further delays in the implementation of constitutional rights . . . and further inflames the emotions of the partisans." *Taylor v. Board of Education*, 191 F. Supp. 181, 197 (S. D. N. Y.).

[2] Kaplan "New Rochelle", Civil Rights U. S. A., Public Schools, Cities in the North and West, 1962, Report on the United States Commission on Civil Rights, page 66.

[3] Kaplan "New Rochelle", Civil Rights U. S. A., Public Schools, Cities in the North and West, 1962, Report on the United States Commission on Civil Rights, page 80.

[4] *Taylor v. Board of Education*, 288 F. 2d 600 (2nd Cir. 1961).

[5] 368 U. S. 940 (1961).

of the potential litigation over lines and transfers in the Chicago school district, for example, where respondents understand that a case on similar issues is pending. Moreover, thus far in this brief the type of problem considered has related only to the relatively simple ones relating to lines and transfers. When one gets into more complex areas, such as so-called de facto segregation,[6] or discrimination because of school testing programs, the problems become greater for the courts. When one adds a fluid situation which changes from year to year, and possible intransigence on the part of one of the parties, there is grave doubt that courts can deal effectively with the issues.

Whatever other conclusion one may draw from the New Rochelle experience one cannot doubt that more adequate machinery than the federal courts could provide should be available for the determination of detailed school issues.

Courts doubtless are the proper forum for the evolution of basic principles, in the field of public education, but they are ill prepared to implement policies in specific situations.

It is pertinent to inquire into the possible effect upon the federal courts of a ruling in favor of petitioners, as a decision in favor of petitioners potentially opens to question in the federal courts every attendance unit boundary line in every school district in the nation which has white and Negro students. Future petitioners will not have to preface the filing of their complaints in the district court by any action, even that of requesting the local board of education to take or desist from some action. They will be able to allege on information and belief that a board

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[6] Cf. *Bell v. School City of Gary*, Civil No. 3346, District Court for the Northern District of Indiana, Hammond Division, January 29, 1963.

of education has a policy, or carries on a practice, as a result of which a child suffers the denial of rights under the Fourteenth Amendment. Thereafter the matter is up for judicial determination.

It does not take much knowledge of practical life to realize that if federal courts were opened to this type of suit, few, if any, disagreements over the attendance unit boundary lines, or the transfer of pupils, would be determined at a local level. The tendency would be to go into the district court not only as a court of review of an action of a school board, but also as an arbiter in the first instance.

While the amount of litigation probably would not be so great if the actions were initiated locally the number of suits filed as a result of an organized effort would be limited only by the will of those directing the effort.

The most efficient way to implement the principle laid down in **Brown v. Board of Education** is to permit states which seriously desire to follow it to implement it on a local level.

III.

The School Code of Illinois Provides an Adequate Administrative Remedy.

A fair appraisal of the laws of Illinois reveals that the Superintendent has very great and definite powers to carry out the antisegregation policy of the State of Illinois.

The Superintendent has by Section 2-3.3 of The School Code the power

"... to supervise all the public schools in the state."

The ultimate reach of the authority has not been fully explored, but it is more reasonable to interpret this au-

thority as including power to enforce the State's clear policy on racial segregation than to interpret it as not including such power.

However, the Superintendent's powers are even more specifically given.

By Section 2-3.25 the Superintendent is required to establish standards for the operations of schools and to grant certificates of recognition to schools meeting such standards. Through this power the Superintendent can withhold or revoke the recognition of a school district which he finds guilty of violating a pupil's rights under the Fourteenth Amendment as well as the Constitution and laws of Illinois. Indeed, one cannot imagine the Superintendent recognizing a school district which carries out practices he finds to violate the law.

Still more specific, as respects the problem of segregation, Section 18-12 places a condition upon a school district's ability to receive state financial aid to be in compliance with Section 10-22.5, the second last paragraph of which is as follows:

> "No State aid claim may be filed for any district unless the Clerk or secretary of the school board executes and files with the Superintendent of Public Instruction, on forms prescribed by him, a sworn statement that the district has complied with the requirements of Section 10-22.5 in regard to the non-segregation of pupils on account of color, creed, race or nationality."

As a Superintendent of Public Instruction has a duty to certify claims for State aid to the auditor of public accounts, who issues the checks, he has complete control of these funds. Without state funds the school district, such as the respondent School District, could not operate.

It is inconceivable that a Superintendent of Public Instruction who had found a complaint of segregation to be valid under Section 22-19 would, none the less, certify that school district's claim for State aid. It is absurd to suggest, as petitioners do, that a Superintendent of Public Instruction who had found a school district to be in violation of a law by segregating pupils after hearings pursuant to Section 22-19 would be bound to accept at face value an affidavit of the secretary of the board of education to the effect that no segregation was practiced.

The obvious purpose of the Legislature in enacting that part of Section 18-12 referred to was to put teeth into the anti-discrimination sections of State law.

A Superintendent of Public Instruction who had found that a school district was violating the law by segregating colored pupils from other pupils would undoubtedly direct the school district to correct the situation, and failing compliance would stop state aid or withdraw recognition, or both. These means, with the Superintendent's continuing power of supervision, would bring a noncomplying board of education at once to its knees.

In order to perform any of the acts forcing compliance the Superintendent would be able to act completely on his own. He need not resort to the courts, nor ask the Attorney General of Illinois to do anything.

One can torture the language of the statutes as do the petitioners in their briefs, beyond rational bounds. One can also hypothesize that one official or another would be unfaithful to his oath and sabotage the law. Something more is required to be shown, in this connection, besides the mere possibility, as all men may possibly fail in their duty.

The Requirement of Fifty Signatures.

Petitioners devote a lot of attention to a requirement of Section 22-19 that a proceeding be initiated by a petition bearing the signatures of 50 legal voters. The district court held that it is not too much to require petitioners, before proceeding in a federal court, to show that they cannot obtain fifty signatures.

In any event Section 22-19 authorizes the Superintendent of Public Instruction to initiate a proceeding ". . . whenever he has reason to believe that any such discrimination may exist in any school district".

Respondents are content to rest their case for Section 22-19 and other sections of The School Code on the power of the initiation of a Section 22-19 proceeding by the Superintendent of Public Instruction. If petitioners made a showing that they could not obtain fifty signatures, and if the Superintendent of Public Instruction were to ignore a complaint of segregation reasonable on its face, and failed to initiate a Section 22-19 proceeding respondents would consider that the petitioners had performed as much as they were required to do under Section 22-19.

In the Case Against the Respondent Superintendent of Schools.

It has been pointed out earlier that the case has not involved a consideration of the position of the superintendent of schools, the respondent Robert F. Catlett, aside from the school district. There is, therefore, nothing to review.

It is pointed out that Section 22-19 provides a procedure where there are complaints of segregation "on behalf of the school board", which would include actions of the superintendent of schools, as well as by the school board.

CONCLUSION.

The judgment of the District Court of the United States for the Eastern District of Illinois should be affirmed.

Respectfully submitted,

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